

## **ADVISORY OPINION REQUEST**

**Number:** AO 13-02-CD  
**Requested By:** Pat Lavin, Vote Yes! Repeal the Giveaway  
**Prepared By:** Thomas R. Lucas, Associate Attorney *TRL*  
**Date Issued:** May 15, 2013  
**Subject:** Reporting requirements of referendum application groups  
**Commission Decision:** On June 6, 2013, the Alaska Public Offices Commission heard and approved this advisory opinion requires by a vote of 5 to 0.

This advisory opinion concerns signature gathering and the extent to which a group must report its efforts to gather signatures.

### **QUESTIONS PRESENTED**

1. Does "Repeal the Giveaway"—a group currently collecting signatures to repeal a 2013 law—report to APOC prior to certification of their ballot question?
2. Does "Repeal the Giveaway" report contributions and expenditures made to support signature gathering?
3. If a group were formed to dissuade Alaskans from signing "Repeal the Giveaway's" petition, would that group have to report to APOC?

### **SHORT ANSWERS**

1. Because "Repeal the Giveaway" is the group formed to sponsor this referendum, "Repeal the Giveaway" must file an initial report with APOC and report to APOC every quarter.
2. "Repeal the Giveaway" must report all contributions and expenditures if the contributions and expenditures are intended to influence the outcome of the referendum vote. But "Repeal the Giveaway" is not required to report contributions and expenditures which are solely for its signature gathering efforts.
3. Because "Repeal the Giveaway" only expected that a group will form to oppose their signature gathering efforts, APOC will not answer this question in this advisory opinion. AS 15.13.374(b)(4) does not allow the activity of a third party to be the subject of an advisory opinion. However, "Repeal the Giveaway" should refer to a forthcoming advisory opinion that discusses the reporting requirements for an organization opposing signature gathering.

### **FACTS**

On April 18, 2013 a referendum application regarding Senate Bill 21 (oil tax) was filed with the Lieutenant Governor. The primary Sponsors were Victor Fisher, Bella Hammond and N. Jim Whitaker Jr. The application was certified on April 25, 2013 and Petition Booklets were issued on April 30, 2013. The sponsors and their group "Repeal the Giveaway" have until July 13, 2013 to gather the necessary signatures to get the referendum on the August, 2014 ballot.

At this time, "Repeal the Giveaway" is signature gathering. "Repeal the Giveaway" is accepting donations and spending income in furtherance of signature gathering and wants to know if it must file APOC reports.

## **BACKGROUND**

### **A. THE BALLOT PROCESS.**

Under Alaska law, Alaska citizens can either repeal existing laws or create new laws by placing a question on the ballot. This is called the ballot process. A *referendum* is where the citizens vote whether to repeal an existing law. An *initiative* is where citizens vote whether to create a new law. The process is roughly the same for referendums and initiatives.

Both initiatives and referendums start by the filing of an application with the Lieutenant Governor.<sup>1</sup> The application must include the signatures of qualified voters who will serve as sponsors.<sup>2</sup> The Lieutenant Governor certifies the referendum or initiative and then the Lieutenant Governor prepares petitions for circulation by the sponsoring group.<sup>3</sup> The sponsoring group then must obtain a certain amount of signatures from each voting district in order to have their question certified and placed on the ballot. This process is referred to as "signature gathering" and the sponsoring group solicits contributions and expends money to obtain the signatures.

### **B. AFTER 2010 LAW CHANGES, CAMPAIGN FINANCE REPORTING DIFFERS BETWEEN REFERENDUMS AND INITIATIVES DURING SIGNATURE GATHERING.**

Since 1981, this Commission has taken the position that donations received and money spent solely for the purpose of collecting signatures are not reportable "contributions" or "expenditures" and are not, therefore required to be reported under the Campaign Disclosure Law.<sup>4</sup>

In 2010, the Legislature added subsection 15.13.110(g) to campaign finance laws. The new legislation requires *initiative* supporters to report contributions and expenditures related to signature gathering.<sup>5</sup> The new law does not require referendum supporters to report contributions and expenditures related to signature gathering.<sup>6</sup>

## **ANALYSIS**

### **A. "REPEAL THE GIVEAWAY" MUST REPORT TO APOC.**

There is no question that "Repeal the Giveaway" has reporting requirements to APOC at this time. Under AS 15.13.110(e), any group that is established to sponsor a referendum must report within 30 days of starting the ballot process. Then the sponsoring group must report quarterly thereafter. In this

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<sup>1</sup> AS 15.45.260

<sup>2</sup> AS 15.45.270

<sup>3</sup> AS 15.45.320

<sup>4</sup> Exhibit 1; 1985 Commission approved Advisory Letter.

<sup>5</sup> Exhibit 2; April 13, 2010 Senate Judiciary Committee meeting minutes wherein a House sponsor of HB 36 explains the purpose of the proposed statutory changes.

<sup>6</sup> AS 15.13.400(4)(A)(iii) and (6)(A)(v)

case, “Repeal the Giveaway” is the group that was established to sponsor this particular referendum. Thus, “Repeal the Giveaway” must follow the requirements of AS 15.13.110(e).

**B. “REPEAL THE GIVEAWAY” IS NOT REQUIRED TO REPORT TO APOC, INCOME AND SPENDING FOR THE SOLE PURPOSE OF SIGNATURE GATHERING.**

“Repeal the Giveaway” is correct; APOC—as a general matter—does not consider income and spending solely aimed at gathering signatures as reportable to APOC. This is because such income and spending does not meet the definitions of “contribution” and “expenditure” set forth in AS 15.13.400(4) and (6).

Furthermore, the 2010 law changes only apply to initiatives, not referendums, and the Commission still considers signature gathering for referendums non-reportable activity under its prior decisions.

Here, if “Repeal the Giveaway” receives donations and spends income solely in support of its signature gathering efforts, it need not report those as contributions or expenditures to APOC.<sup>7</sup>

**C. “REPEAL THE GIVEAWAY” SHOULD BE CONCERNED ABOUT THE POTENTIAL FOR COMPLAINTS SHOULD IT OPT TO FILE “ZERO REPORTS”.**

APOC Staff does not discourage the voluntary reporting of signature gathering activities as contributions and expenditures. There are at least two reasons why “Repeal the Giveaway” may wish to voluntarily report its signature gathering donations and purchases.

First, “Repeal the Giveaway” must recognize, that if it files “zero reports” it will not be able to transfer any surplus funds it may have at the end of the signature gathering phase into any effort to campaign for passage of the proposition without full disclosure of the sources of those funds. In other words if, after certification, “Repeal the Giveaway” desires to campaign for passage of the proposition; it must either start out with zero funds or it must report all income and purchases from the beginning of its existence. This would be the only way to insure that the true source of any contributions received by “Repeal the Giveaway” that are ultimately used to influence the proposition vote are accurately reported.

Second, “Repeal the Giveaway” must also be mindful that precertification donations and purchases are reportable to APOC as contributions and expenditures if the donations or purchases are made to influence the outcome of the potential election, even if the donation or purchase is made during the signature gathering stage.<sup>8</sup>

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<sup>7</sup> Assuming “Repeal the Giveaway” is receiving donations and spending income solely for signature gathering at this time—and is not receiving donations or spending income to influence the outcome of the 2014 vote—“Repeal the Giveaway” may file “zero reports” to APOC. APOC Staff will assist “Repeal the Giveaway” with these reports.

<sup>8</sup> See, for example, Hackney v. AAMS, CAP, NANA Case no. 09-07-CD.

### **CONCLUSION**

"Repeal the Giveaway" is required to file a report 30 days after its first filing with the Lieutenant Governor and quarterly reports thereafter until reports are due under AS 15.13.110(a). So long as "Repeal the Giveaway" receives income and spends solely in support of its signature gathering campaign, the reports it files may be "zero reports". "Repeal the Giveaway" must be cognizant of the potential pitfalls discussed above.

### **COMMISSION DECISION**

Only the Commission has the authority to approve an advisory opinion. 2 AAC 50.840. The Commission will rule on staff's proposed advice at its next regular meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff's proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at (907) 276-4176.